

Claimant alleged he injured his back while performing community service work for the District Court of Crawford County, Kansas, on July 10, 1995. At the time of the alleged injury, claimant was working at the Salvation Army located in Pittsburg, Kansas. Claimant was performing this community service work through the Southeast Kansas Community Corrections Office. The community service work was part of claimant's probation from a felony conviction for the sale of methamphetamines. Claimant testified that when he lifted

a clothing bundle he immediately felt pain in his back and notified his probation officer, Tracy Harris, of the injury. Claimant also testified that he sought medical treatment on his own on the day of the injury at the emergency room of Mt. Carmel Medical Center in Pittsburg, Kansas. Claimant testified that he returned to the emergency room for additional treatment for his back injury on two subsequent occasions. However, claimant did not admit into evidence contemporaneous hospital emergency medical records to verify the treatment.

The preliminary hearing record established that claimant had prior back problems from a work-related injury with another employer. Claimant settled that workers compensation case approximately one year prior to this alleged injury on July 20, 1994 for \$7,500. Claimant admitted that he remained symptomatic because of that injury. The respondent admitted a medical report into evidence that indicated that claimant had been examined and treated by Kevin Komes, M.D., on May 26, 1995, a month and one-half prior to this alleged injury. The medical report indicated that Dr. Komes treated claimant for back pain that radiated down both of claimant's legs. Also, claimant was receiving Social Security disability benefits as a result of his previous back problem.

At the preliminary hearing, claimant presented his testimony, testimony of his landlord, Owen O'Hara, and his friend, Jan Cashero. Both Mr. O'Hara and Ms. Cashero testified claimant had told them that he had injured his back lifting bundles of clothes while working at the Salvation Army in the summer of 1995. Claimant also admitted into the preliminary hearing record a medical report from Edward J. Prostic, M.D., an orthopedic surgeon. Dr. Prostic examined the claimant on March 18, 1996, and diagnosed claimant with an injury to his low back and related the injury to his employment. Dr. Prostic also concluded that claimant had degenerative disc disease. Dr. Prostic recommended treatment in the form of epidural steroid injections and, if needed, further diagnostic studies and possible surgery.

The respondent presented in-person testimony at the preliminary hearing of Community Correction Officers Gerald Lynn Wayman, Sharie Paschetti and Tracy Diane Harris. All of these officers had worked with the claimant during the time he was in the Community Service Correction Probation Program. They testified that they knew about his prior back problems and claimant continuously complained to them about his back all of the time he was in the program. The officers all verified that claimant had not notified any of them that he had injured his back while working at the Salvation Army. The officers further testified that claimant's back complaints had not seemed to increase or accelerate during the time he was in the program. Jimmie Lucinda Stryker and Linda Leigh Green, both employees of the Salvation Army, also testified on behalf of the respondent. Both established that while claimant was working at the Salvation Army he did not tell either of them that he had hurt his back while lifting bundles of clothing on July 10, 1995, or at any time while he was performing work for the Salvation Army. Neither of these employees knew anything about claimant's alleged injury until they were notified by his attorney, in writing, in November of 1995.

The Administrative Law Judge had the unique opportunity to personally observe the claimant and all the other witnesses who testified both on claimant's behalf and on the behalf of the respondent. The Appeals Board finds that some deference should be given to the Administrative Law Judge because he was able to personally assess the credibility of all the witnesses. Therefore, after a review of the whole evidentiary record, and giving due deference to the conclusions of the Administrative Law Judge, the Appeals Board

affirms the Administrative Law Judge's Order that denied claimant's request for medical treatment. The Appeals Board finds that when the testimony of all witnesses is considered, in conjunction with the medical reports admitted into evidence, that the more plausible explanation for claimant's current need for medical treatment is not the alleged accident while employed by the respondent but a continuation of his previous back problems.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated April 22, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Ronald J. Laskowski, Topeka, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director